

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
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IN THE MATTER OF THE INDIANA UTILITY  
REGULATORY COMMISSION'S  
INVESTIGATION OF MATTERS RELATED TO  
THE FEDERAL COMMUNICATIONS  
COMMISSION'S REPORT AND ORDER AND  
ORDER ON REMAND AND FURTHER NOTICE  
OF PROPOSED RULEMAKING IN CC DOCKET  
NOS. 01-338, 96-98, AND 98-147

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CAUSE NOS. 42500,  
42500-S1, 42500-S2 MAR 04 2004

**FILED**

INDIANA UTILITY  
REGULATORY COMMISSION

You are hereby notified that on this date the Presiding Officers make the following Entry in this Cause:

On March 2, 2004, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *United States Telecom Association v. Federal Communications Commission, et al.*, No. 00-1012, that vacated major determinations made by the Federal Communications Commission ("FCC") in its Triennial Review Order ("TRO")<sup>1</sup>. The Court of Appeals, among other things, vacated and remanded the FCC's nationwide impairment determinations with respect to mass market switching and certain dedicated transport elements (DS1, DS3, and dark fiber), and also vacated the FCC's subdelegation to state commissions of decision-making authority over impairment determinations. The Court did not make its decision to vacate certain portions of the TRO effective immediately, but issued a temporary stay of at least sixty (60) days.

The Indiana Utility Regulatory Commission's ("Commission's") ongoing TRO proceedings in Cause Nos. 42500, 42500-S1 and 42500-S2 are affected by this Court of Appeal's opinion, as are other state commission TRO proceedings. Given the significance of this opinion, it is important that we communicate with the parties on this issue.

The parties and the Commission have already invested significant resources in these TRO proceedings and there remains the possibility that the current issues and directives of the TRO will not change. However, we also recognize the sensitivity of the situation, in that the parties and this Commission should be concerned about continuing to invest resources in TRO issues that may significantly change or be eliminated. We

<sup>1</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338 et al., FCC 03-36, 18 FCC Rcd 16978 (Aug. 21, 2003); Errata, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338 et al., FCC 03-227, 18 FCC Rcd 19020 (Sept. 17, 2003).

believe the most appropriate course of action with respect to the affected proceedings in this state is to not suspend or delay these TRO Causes. We will continue to monitor and weigh information relevant to the Court of Appeal's opinion and the responses thereto. The opinion is only two days old and additional information or events in the coming days or weeks may cause us to reevaluate the appropriateness of not delaying these Causes.

**IT IS SO ORDERED.**

*Judith G. Ripley*  
Judith G. Ripley, Commissioner

*William G. Divine*  
William G. Divine, Administrative Law Judge

*March 4, 2004*  
Date

*Nancy E. Manley acting for*  
Nancy E. Manley, Secretary to the Commission